

OCA FILE LEG

8 September 1989
OCA 3174-89

NOTE FOR:

[Redacted]

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Special Assistant/DCI

FROM:

[Redacted]

STAT

Acting Deputy Director for Legislation
Office of Congressional Affairs

SUBJECT:

State Authorization Act

Attached for your information is a copy of a letter to Office of Management and Budget (OMB) objecting to a provision in the State Authorization Bill that imposes criminal penalties on US Government employees who solicit funds from a foreign or domestic entity that would have the purpose or direct effect of furthering any military, foreign policy, or intelligence activity for which funds are prohibited or restricted by United States law. A copy of the provision is also attached. I believe that Secretary Baker may have been referring to this provision in his recent discussions with Judge Webster.

[Redacted]

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Attachments

OCA/LEG, [Redacted] (8 Sept 89)

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Central Intelligence Agency



Washington D.C. 20505

23 AUG 1989

OCA 2997-89

Mr. James C. Murr
Assistant Director for Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Murr:

This is in response to your request for the views of the Central Intelligence Agency on the "Foreign Relations Authorization Act, Fiscal Years 1990 and 1991." With the exception of the two areas of concern which are discussed below, the CIA has no objections to passage of the legislation.

The first area of concern involves Section 111 of the Senate version of the Foreign Relations Authorization Act. That section imposes criminal penalties on US Government employees who solicit funds from a foreign or domestic entity that would have the purpose or direct effect of furthering any military, foreign policy, or intelligence activity for which funds are prohibited or restricted by United States law. The section also prohibits the provision of US assistance to a third party if it would have the purpose or direct effect of furthering a prohibited activity. We understand that the Departments of State and Justice have provided Chairman Pell with letters objecting to this provision as unwise and unconstitutional. We fully agree with the State and Justice Departments' position on this section and request that the letters previously sent to Chairman Pell be resubmitted to the Conferees.

The Central Intelligence Agency remains strongly opposed to Section 111 because of the significant detrimental effect it could have on US intelligence interests. The section prohibits solicitation of funds or assistance "expressly prohibited or restricted by United States law." The scope of such restrictions are not always clear on their face. This is especially the case when the statute in question involves a politically contentious and complex foreign policy issue.

Mr. James C. Murr

In such an instance, the intended scope of the statute is often the subject of continuing interpretation and dispute not only between the Executive and Congressional branches, but inside those branches as well. It would, therefore, be virtually impossible to give clear legal guidance on whether certain intelligence activities would be prohibited by Section 111. When the possibility exists that intelligence activities conducted in good faith will subsequently be deemed technically illegal, exposing intelligence officers to criminal prosecution, there will be an inevitable chilling effect whereby these officers understandably will be reluctant to authorize or engage in any activities that might arguably fall within the broadest interpretation of the statute. This chilling effect could impair the ability of the Intelligence Community to carry out activities vital to US intelligence objectives or national security interests.

The second area of concern for the CIA involves Section 1049 in the Senate version of the Act. That provision requires the Comptroller General to report to Congress on the involvement of Cuba in drug trafficking. It also states, "the Comptroller shall call on the Drug Enforcement Agency, the Federal Bureau of Investigation, and any other appropriate agencies." This language may cause the GAO to erroneously believe it has been granted additional authority to obtain classified information from the CIA. It is, therefore, requested that the following sentence be added to this section: "This section does not confer authority upon the Comptroller General, additional to that otherwise provided by law, to gain access to sensitive information held by any agency within the Intelligence Community."

Thank you for the opportunity to express the views of the CIA on this legislation. Should you desire additional comments, please do not hesitate to contact [redacted] of my staff at 482 [redacted]

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Sincerely,

[redacted]
(S) E. Norbert Garrett
Director of Congressional Affairs

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SIDE-BY-SIDE COMPARISON OF H.R. 1487 AND S. 1160
 FOREIGN RELATIONS AUTHORIZATION ACT, FY 1990 (1991)
 HOUSE SENATE

14 **PART B—DEPARTMENT OF STATE AUTHORITIES AND**
 15 **ACTIVITIES; FOREIGN MISSIONS**

16 **SEC. III. PROHIBITION ON SOLICITING OR DIVERTING FUNDS**
 17 **TO CARRY OUT ACTIVITIES FOR WHICH UNITED**
 18 **STATES ASSISTANCE IS PROHIBITED.**

19 Chapter 1 of part III of the Foreign Assistance Act of
 20 1961 is amended by adding at the end thereof the following
 21 new section:

22 **"SEC. 620F. PROHIBITION ON SOLICITING OR DI-**
 23 **VERTING FUNDS TO CARRY OUT ACTIVITIES FOR WHICH**
 24 **UNITED STATES ASSISTANCE IS PROHIBITED.—**

1 **"(a) PROHIBITION.—(1)** Whenever any provision of
 2 United States law enacted on or after the date of enactment
 3 of the Foreign Relation Authorization Act, Fiscal Year
 4 1990, expressly prohibits all United States assistance, or all
 5 assistance under a specified United States assistance ac-
 6 count, from being provided to any specified foreign region,
 7 country, government, group, or individual, then—

8 **"(A)** no officer or employee of the United States
 9 Government may solicit the provision of funds or mate-
 10 rial assistance by any foreign government (including
 11 any instrumentality or agency thereof), foreign person,
 12 or United States person, and

13 **"(B)** no United States assistance shall be provid-
 14 ed to any third party,
 15 if the provision of such funds or assistance would have the
 16 purpose or direct effect of furthering or carrying out the same

SIDE-BY-SIDE COMPARISON OF H.R. 1487 AND S. 1160
FOREIGN RELATIONS AUTHORIZATION ACT, FY 1990 (1990)
SENATE

HOUSE

"(B) sales, credits, and guaranties under the Arms Export Control Act;

"(C) export licenses issued under the Arms Export Control Act; and

"(D) activities authorized pursuant to the National Security Act of 1947 (50 U.S.C. 410 et seq.), the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.), or Executive Order Number 12333 (December 4, 1981), excluding any activity involving the provision or sharing of intelligence information; and

"(3) the term 'United States assistance account' means an account corresponding to an authorization of appropriations for United States assistance.

"(e) CONSTRUCTION.—Nothing in this section shall be construed to limit the full Constitutional powers of the President to conduct the foreign policy of the United States."

17 or similar activities, with respect to that region, country, gov-
18 ernment, group, or individual, for which United States as-
19 sistance is prohibited.

20 "(2) As used within the meaning of paragraph (1)(B),
21 assistance which is provided for a particular purpose in-
22 cludes assistance provided under an arrangement condition-
23 ing, expressly or impliedly, action by the recipient to further
24 that purpose.

1 "(b) PENALTY.—Any person who violates the provision
2 of subsection (a)(1)(A) (relating to solicitation) shall be im-
3 prisoned not more than 5 years or fined in accordance with
4 title 18, United States Code, or both.

5 "(c) APPLICABILITY.—The provisions of this section
6 shall not be superseded except by a provision of law enacted
7 on or after the date of enactment of the Foreign Relations
8 Authorization Act, Fiscal Year 1990, which specifically re-
9 peals, modifies, or supersedes the provisions of this section.

10 "(d) DEFINITIONS.—For purposes of this section—
11 "(1) the term 'person' includes (A) any natural
12 person, (B) any corporation, partnership, or other legal
13 entity, and (C) any organization, association, or other
14 group;

15 "(2) the term 'United States assistance' means—
16 "(A) assistance of any kind under the For-
17 eign Assistance Act of 1961;